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PACIFIC GAS AND ELECTRIC COMPANY

50-275  
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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re  
PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation,  
Debtor.  
Federal I.D. No. 94-0742640

Case No.: 01-30923 DM

Chapter 11 Case

Date: October 29, 2002  
Time: 1:30 p.m.  
Judge: Hon. Dennis Montali  
Dep't: 235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, California

**HELLER EHRMAN WHITE & McAULIFFE LLP'S REPLY TO UNITED STATES  
TRUSTEE'S OBJECTION TO FEES OF HELLER EHRMAN, AND TO UNITED  
STATES TRUSTEE'S REQUEST FOR HOLD-BACK**

Heller Ehrman White & McAuliffe LLP ("Heller Ehrman"), Special Counsel for Debtor and Debtor-in-Possession Pacific Gas and Electric Company ("PG&E"), submits this Reply to the United States Trustee's ("UST's") Objection to Fees of Heller Ehrman, and to the UST's Request for Hold-Back.

The UST seeks to deny or delay compensation to Heller Ehrman based on two extraordinary, ill-considered and completely unsupported assertions:

*First*, the UST contends that because some Heller Ehrman lawyers and paralegals

Heller  
Ehrman  
White &  
McAuliffe LLP

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1 were required to work extremely long hours on certain days to provide services to PG&E,  
2 Heller Ehrman should be penalized by reducing its compensation for such days by 10-20%.  
3 This contention is unsustainable.

4       *Second*, the UST contends that 20% of all of Heller Ehrman's fees and costs incurred  
5 during the application period should be held back based on the contingency that *if* PG&E's  
6 plan of reorganization is confirmed, PG&E's parent company, PG&E Corporation ("PG&E  
7 Corp"), will seek reimbursement from PG&E for certain services provided by professionals  
8 other than Heller Ehrman to PG&E Corp that allegedly *may* be duplicative of services  
9 provided by Howard Rice, Heller Ehrman, Cooley Godward, Rothschild, Skadden Arps, and  
10 Winston Strawn. The UST's demand for a holdback rests on no authority, is based on a  
11 chain of speculative premises, and is fundamentally misplaced since no creditor would be  
12 prejudiced if PG&E's plan were confirmed and PG&E Corp obtained reimbursement from  
13 PG&E.

14 **I. There Is No Basis for Reducing Compensation to Heller Ehrman for 14+ Hour**  
15 **Days**

16       The UST asserts: "A number of professionals at Heller Ehrman and Howard Rice  
17 show large numbers of very long billing days. *Even if these hours were spent*, they should  
18 be subject to billing judgment for effectiveness and reduced. In order for a professional to  
19 bill 14 or 15 hours, he or she must be at work considerably longer. This would strongly  
20 suggest significantly decreased effectiveness at some point. Accordingly, we submit a 10-  
21 20% reduction is reasonable and warranted for all time billed during 14+ hour days."  
22 Objection at 1-2 (emphasis added).

23       The UST's implication that these time entries may be fraudulent or misstated is not  
24 deserving of a reply and we assume that the language emphasized above reflects an ill-  
25 considered choice of words. Beyond that, there is no basis for reducing compensation to  
26 Heller Ehrman based on the fact that some of its lawyers and paralegals were required to  
27 devote long hours on certain days to providing legal services to PG&E. The UST's  
28 objection relates to only 33 out of more than 2,800 time entries included in Heller Ehrman's

1 Fourth Interim Fee Application. Substantially all of the few 14+ hour entries identified by  
2 the UST relate to two highly demanding and time-sensitive projects.

3 The first project involved PG&E's response to a fact-finding investigation  
4 commenced by the Federal Energy Regulatory Commission ("FERC") in the wake of highly  
5 publicized disclosures relating to Enron's manipulation of the California energy markets.  
6 FERC served data requests on PG&E (and numerous other energy companies throughout the  
7 United States) demanding review of vast numbers of documents on extremely short order  
8 (without any time extensions). The data requests required review, specifically, of  
9 essentially all of PG&E's documents relating to its participation in power markets in 2000  
10 and 2001 and all documents relating to information PG&E learned about the activities of  
11 other market participants during that period. PG&E retained Heller Ehrman to represent it  
12 in this matter, which entailed intense document review by a number of Heller Ehrman  
13 lawyers over approximately a two-week period. Several of those lawyers recorded a  
14 number of 14+ hour days responding to FERC's mandatory discovery demand. *See*  
15 Declaration of Adam M. Cole ("Cole Decl.") ¶ 4.

16 The second main project for which a number of Heller Ehrman lawyers and  
17 paralegals recorded 14+ hour days involved work performed by Heller Ehrman in drafting  
18 three separate summary judgment briefs on complex legal issues relating to the Filed Rate  
19 Doctrine. Heller Ehrman was required to conduct extensive legal research and drafting in a  
20 four-week period to prepare an opening summary judgment brief, a consolidated opposition  
21 to counter-motions for summary judgment by the Commissioners of the California Public  
22 Utilities Commission ("CPUC") and an intervenor, The Utility Reform Network, and a reply  
23 brief, plus extensive supporting declarations and other pleadings. A number of Heller  
24 Ehrman lawyers were required to work extremely long hours on a number of days to prepare  
25 those pleadings under tight time deadlines. *See* Cole Decl. ¶ 5.

26 Prior to filing the current Objection, the UST sent an email to Heller Ehrman  
27 requesting that Heller Ehrman review its 15+ hour entries and adjust them, if necessary.  
28 Heller Ehrman devoted significant time to reviewing the entries identified by the UST (the  
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1 same ones identified in the current Objection) to ensure that each was accurate and  
2 appropriate. Heller Ehrman sent a detailed email response to the UST explaining each of  
3 the entries identified by the UST, and advising that each of those entries accurately reflects  
4 time recorded by Heller Ehrman lawyers and paralegals in providing services to PG&E. See  
5 Cole Decl. ¶ 3. A copy of the UST's email and Heller Ehrman's response are attached as  
6 Exhibit A to the Cole Decl.

7 The UST's bald assertion that Heller Ehrman lawyers and paralegals cannot be  
8 efficient when working 14+ hour days is utterly unsupported and ignores the realities of  
9 providing first-rate client service in the midst of high-stakes, deadline-driven litigation.  
10 While we might wish it were otherwise, Heller Ehrman lawyers and paralegals occasionally  
11 are called upon to devote extremely long hours to a client's work when circumstances  
12 demand. Heller Ehrman lawyers and paralegals are committed to providing complete legal  
13 services to PG&E and do so effectively even under extreme demands and time constraints.<sup>1</sup>

14 The penalty requested by the UST is all the more unreasonable in light of the fact that  
15 Heller Ehrman already has significantly reduced its fees to PG&E. Heller Ehrman provides  
16 PG&E a 10% discount from Heller Ehrman's normal rates for all work for all timekeepers  
17 on all matters. For the fourth interim fee application period, that discount constitutes a  
18 \$326,630.47 reduction in Heller Ehrman's fees.<sup>2</sup> In addition, Heller Ehrman has agreed to  
19 freeze its shareholder rates for two years at the rate in place when work on a given matter  
20 commenced. That discount has resulted in a very substantial additional reduction in fees

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21  
22 <sup>1</sup> A partial alternative to working long days under short deadlines would have been to  
23 obtain the assistance of additional lawyers, with less experience on the particular matters at  
24 issue, to assist with these projects. Adding additional lawyers might potentially have  
25 prevented some of the 14+ hour days, and thus obviated the UST's objection. But it would  
26 have increased fees overall to commit inexperienced lawyers to these time-sensitive  
27 projects. And in any event, responsibilities such as, e.g., summary judgment briefing cannot  
28 be delegated to lawyers unfamiliar with the case. Heller Ehrman and its lawyers should not  
be penalized for working extraordinarily hard, and for doing so in an efficient manner.

1 billed to PG&E. *See* Cole Decl. ¶ 6.

2 **II. There Is No Basis for a "Hold-Back" in Compensation to Heller Ehrman**

3 The UST asserts: "According to PG&E's disclosure statement, PG&E's Parent  
4 intends to ask for reimbursement for its reorganization work estimated at \$110 million. The  
5 Parent's professionals include Dewey Ballantine, Weil Gotshal, Laurence Tribe and  
6 financial advisors. They have all been actively involved in the formulation of the plan,  
7 preparation of the disclosure statement, plan prosecution, key hearings, litigation, and  
8 regulatory applications and proceedings. With multiple sets of attorneys working on the  
9 same issues, it is difficult to determine the reasonableness of one firm's fees and  
10 contribution without seeing the others'. Accordingly, we suggest a hold-back of 20% for  
11 Howard Rice, Heller Ehrman, Cooley Godward, Rothschild, Skadden Arps, and Winston  
12 Strawn fees to ultimately determine if they are reasonable and not duplicative of the Parent's  
13 effort should the PG&E plan be confirmed." Objection at 3.

14 Conspicuously absent from the UST's brief is citation to a single authority for the  
15 proposition that a fee holdback based on the UST's conjectures is warranted here. To the  
16 contrary, full compensation to Heller Ehrman for its services during the fourth interim fee  
17 application period is proper at this time. All of the work performed by Heller Ehrman  
18 during the application period was directly for the benefit of the debtor and authorized by this  
19 Court.

20 The UST's request for a fee holdback rests on layers of speculation. It assumes (i)  
21 that PG&E's plan is confirmed, (ii) that PG&E Corp in fact obtains reimbursement from the  
22 estate, (iii) that the services provided by Heller Ehrman to PG&E duplicate services  
23 provided by Dewey Ballantine, Weil Gotshal, Laurence Tribe and financial advisors to  
24 PG&E Corp, and (iv) that the way the Court should deal with that hypothetical duplication  
25 is by penalizing PG&E's Court-approved professionals in advance, as opposed to adjusting

26  
27 <sup>2</sup> Heller Ehrman's fees billed to PG&E for the fourth interim fee application period  
28 are \$2,939,674.20. Absent a 10% discount, those fees would be \$3,266,304.67.

1 the reimbursement to PG&E Corp. As of yet, PG&E's plan has not been confirmed, and  
2 PG&E Corp has not obtained reimbursement from PG&E.

3 Moreover, we can conceive of little, if any, possible duplication between Heller  
4 Ehrman's services for PG&E and those of Dewey Ballantine, Weil Gotshal, Laurence Tribe  
5 and financial advisors for PG&E Corp. No Heller Ehrman lawyers have been "involved in  
6 the formulation of the plan, preparation of the disclosure statement, [or] plan prosecution"  
7 (Objection at 3), except to provide infrequent advice as to how PG&E's plan bears on other  
8 matters in which PG&E is involved and as to which Heller Ehrman has been authorized to  
9 represent PG&E (*e.g.*, the Filed Rate Case and various FERC proceedings). *See* Cole Decl.  
10 ¶ 7.

11 Heller Ehrman has provided services to PG&E in connection with "hearings,  
12 litigation, and regulatory applications and proceedings," which we describe in detail in the  
13 narrative descriptions in our Fourth Interim Fee Application (¶¶ 12-72). Notwithstanding  
14 those extensive descriptions, the UST does not identify a single specific service by Heller  
15 Ehrman that it contends potentially duplicates work performed by Dewey Ballantine, Weil  
16 Gotshal, Laurence Tribe or financial advisors for PG&E Corp.<sup>3</sup> Under such circumstances,  
17 the UST's request that Heller Ehrman be denied interim compensation of \$587,934 is  
18 unsustainable.<sup>4</sup>

19  
20 <sup>3</sup> Matter No. 77 (CPUC OII Proceeding) pertains to an investigation instituted by the  
21 CPUC against PG&E and PG&E Corp (which was eventually dismissed from the  
22 investigation). In its objection to Heller Ehrman's Third Interim Fee Application, the UST  
23 vigorously argued that Heller Ehrman should be denied full compensation for services  
24 provided to PG&E in Matter No. 77 because the interests of PG&E and PG&E Corp  
25 overlapped in that proceeding. The Court overruled the UST's objection and ruled that  
26 Heller Ehrman was entitled to full interim compensation for its work on that matter.

27 <sup>4</sup> Moreover, although the UST asserts that PG&E Corp professionals "have all been  
28 actively involved in the formulation of the plan, preparation of the disclosure statement,  
plan prosecution, key hearings, litigation, and regulatory applications and proceedings"  
(Objection at 3), PG&E's disclosure statement indicates that PG&E Corp's possible request  
for reimbursement is limited to fees and expenses "in connection with the preparation of this  
Disclosure Statement and the Plan and the prosecution, implementation of the Plan . . ."

(Footnote continued)

1 The UST's demand for a holdback is further misplaced because no creditor of PG&E  
2 is at risk even if PG&E's plan is confirmed and PG&E's parent obtains reimbursement from  
3 PG&E. PG&E's plan provides payment to PG&E's creditors of 100 cents on the dollar.  
4 Assuming PG&E's plan is confirmed, if PG&E Corp were to obtain reimbursement from  
5 PG&E, PG&E's shareholder (i.e., PG&E Corp), not its creditors, would bear the ultimate  
6 cost.

7 **III. Conclusion**

8 For the foregoing reasons, the UST's objection to Heller Ehrman's fee request, and  
9 request for hold-back should be denied. Heller Ehrman respectfully requests that the Court  
10 authorize full compensation at this time to Heller Ehrman for its services performed during  
11 the application period, as set forth in Heller Ehrman's Fourth Interim Fee Application.

12  
13 Dated: October 22, 2002

Respectfully submitted,

14 HELLER-EHRMAN-WHITE & McAULIFFE LLP

15  
16 By: 

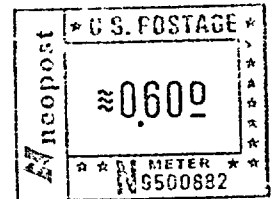
17 ADAM M. COLE  
18 Special Counsel for Debtor in Possession  
19 PACIFIC GAS AND ELECTRIC COMPANY  
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26 (Disclosure Statement at 139), matters which Heller Ehrman has not worked on. Cole Decl.  
27 ¶ 7. The disclosure statement says nothing about PG&E Corp seeking reimbursement for  
28 fees and expenses in connection with "key hearings, litigation, and regulatory applications  
and proceedings."

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